No.

IN THE

Supreme Court of the United States

OCTOBER TERM 1955

IN THE MATTER OF PROCEEDINGS FOR AN ARRANGEMENT UNDER CHAPTER XI OF THE BANKRUPTCY ACT OF

GENERAL STORES CORPORATION,

Debtor-Petitioner,

v.

MAX SHLENSKY, SECURITIES AND EXCHANGE COMMISSION, CREDITORS COMMITTEE AND WAGE CLAIMANTS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWIN M. OTTERBOURG,
Counsel for Petitioner,
Otterbourg, Steindler, Houston & Rosen,
200 Fifth Avenue,
New York 10, N. Y.

AARON ROSEN,
FREDERIC P. HOUSTON,
MARKS F. PASKES,
Of Counsel.

ACKERMAN PRESS, Phones BO 9-7107-8

INDEX

	PAGE
Opinions below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	4
The Intervention to Dismiss Proceedings	5
Reasons for Granting Writ	8
Appendix	1a

CITATIONS

Cases:

John Hancock Mutual Life Ins. Co. v. Casey, 141 Fed. 2d 104 (1940), certiorari denied, 323 U. S. 713 ..... 8, 7a

Mecca Temple v. Dorrock, 142 Fed. 2d 869 (1944), certiorari denied, 323 U. S. 784 ..... 9, 14, 15, 3a, 5a, 6a

Northern Pacific Ry. Co. v. Boyd, 228 U. S. 482 12

Securities and Exchange Commission v. U. S. Realty & Improvement Co., 310 U. S. 434 (1940) 8, 9, 10, 11, 12, 13, 14, 15, 4a, 5a, 6a

In re Transvision, Inc., 217 Fed. 2d 243, certiorari denied, —— U. S. ——; 75 Sup. Ct. 440; February 28, 1955 ..... 9, 10, 11, 15, 16, 3a, 4a, 5a, 6a

STATUTES: PAGE

Bankruptcy Act 5, 11, 3a, 4a, 12a
Section 24 (c) 2
Section 107 ..... 15, 12a
Section 130(7) 11, 12a
Section 141 ..... 11, 13a
Section 146 11
Section 146(2) 13a
Section 147 ..... 11, 13, 13a
Section 172 ..... 4a
Section 221(2) 13a
Section 306(1) 14a
Section 306(3) 10, 14a
Section 308 ..... 15, 14a
Section 322 ..... 4, 14a
Section 328 ..... 12, 13, 15, 4a, 14a
Section 363 4
Section 366 ..... 12, 13a
Section 530 ..... 7a
Section 547 ..... 7a

Bankruptcy Act of 1898,
Section 12 ..... 11, 12
Section 12(d) 12a

Judiciary Law, 28 U. S. C. 1254(1) 2

U. S. Constitutions
Article 1, Sections 1 and 8 14

MISCELLANEOUS:

48 Yale Law Journal, 1334 (1939) 10
40 Columbia Law Review, 1245 (1940) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

In the Matter of Proceedings for an Arrangement under Chapter XI of the Bankruptcy Act of

GENERAL STORES CORPORATION,

Debtor-Petitioner,

v.

MAX SHLENSKY, SECURITIES AND EXCHANGE COMMISSION, CREDITORS COMMITTEE and WAGE CLAIMANTS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

General Stores Corporation prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit, dated April 14, 1955, which affirmed by a divided Court (2 to 1 with three separate opinions) the judgment entered on March 7, 1955 by the United States District Court for the Southern District of New York. Although debtor seeks, pursuant to Chapter XI of the Bankruptcy Act to compose its general unsecured trade and commercial debts, none of which is evidenced by any publicly held security, a single stockholder of the debtor and the Securities and Exchange Commission have nevertheless thwarted the proceeding by

obtaining a judgment dismissing the arrangement proceedings under Chapter XI unless the petition is amended to comply with the provisions for reorganization under Chapter X.

Opinions Below

The opinions of the Court of Appeals (Appendix *infra* pp. 1a-8a) are not yet officially reported. The opinion of the District Court (Record pp. 6a-11a) is reported at 129 F. Supp. 801 and decision denying re-argument (R. 12a) is not officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on April 14, 1955 (App. *infra* p. 8a). Stay of the mandate for thirty days pending application for Writ of Certiorari in this Court was ordered by the Court of Appeals on April 27, 1955 and renewed for an additional thirty days on May 26, 1955 (App. *infra*, p. 10a).

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Sec. 24 (c) of the Bankruptcy Act (11 U. S. C. 47 (c)).

Questions Presented

1. Whether a corporate debtor can be denied the right to proceed under Chapter XI where it seeks merely an arrangement or composition of its general unsecured trade and commercial debts not evidenced by any publicly held securities, and where in no sense does it seek a corporate reorganization or any change whatsoever in its capital structure or its publicly-held and listed common stock.

2. Whether a stockholder owning less than 2/10ths of one percent of the common stock of the debtor, joined by the Securities and Exchange Commission, can compel transfer of such an arrangement proceeding initiated under Chapter XI to a reorganization proceeding under Chapter X in the total absence of even a suggestion of wrongs done stockholders or other persons. May the Court compel the debtor to forego the economies of Chapter XI for the elaborate, expensive and unnecessary proceedings under Chapter X merely on the request of the Securities and Exchange Commission for amplified investigatory authority, without evidence in the record of some showing of wrong done or contemplated, or substantial question of the fairness or feasibility of the arrangement proposed pursuant to Chapter XI?

3. Whether Chapters X and XI are mutually exclusive and on what basis. Within this question is whether or not Congress intended to prevent debtors from employing the drawn out, elaborate and expensive procedures of Chapter X, when all that such debtors sought or required was an arrangement or composition of their unsecured trade and commercial debts; similarly, whether Congress had not intended by removing the "fair and equitable" rule by the 1952 amendment to Chapter XI, that Chapter XI provided the only proper procedure for a composition with unsecured trade and commercial creditors while continuing the interest in the stockholders unchanged.

Statutes Involved

Pertinent provisions of Chapters X and XI are set forth in the Appendix, *infra*, pp. 11a-15a.

Statement

On October 18, 1954 General Stores Corporation, the debtor, filed a petition in the District Court for the Southern District of New York in accordance with the provisions of Sec. 322* of Chapter XI of the Bankruptcy Act for the reason that it was then unable to pay its debts as they matured. It proposed an arrangement of its general unsecured trade and commercial debts (R. 13a), none of which is evidenced by any publicly held security (R. 43a).

A summary of its assets and liabilities attached to the petition showed total assets in excess of total liabilities by $1,600,000. The proposed arrangement would have compulsory effect only on the general unsecured creditors. Under this plan they would receive 100% of their claims, 20% on confirmation of the plan and 20% annually thereafter.** Creditors entitled to statutory priority were to be paid in full (R. 44a).

The general unsecured creditors are: (a) those who are owed for merchandise, services, supplies, rents and salaries, shown in the debtor's Statement of Affairs (R. 41a) to aggregate $524,970.09; and (b) debtor's wholly owned subsidiary, the Stineway Drug Company, on notes aggregating $1,310,000.00 (R. 42a).

The debtor has no funded debts by way of debentures, no certificates of indebtedness of any kind, no bonds,

---

* 11 U. S. C. § 722; 52 Stat. 907.

** Arrangement plans may (and they usually are) altered or modified at various stages of a proceeding up to the time of confirmation as authorized by Sec. 363 (11 U. S. C. 763; 52 Stat. 911) of the Bankruptcy Act.

mortgage certificates, notes or obligations of like character, sold, distributed or in the hands of the general public (R. 42a). No secured obligation and no securities of any kind are affected by or intended to be modified in any manner or form by the arrangement (R. 43a).

The arrangement does not affect or seek to modify in any manner or form the capital stock of the debtor corporation. The authorized capital stock consists of 3,000,000 shares of common stock of the par value of $1.00 each and all of one class, of which there were issued and outstanding at the time of the petition 2,053,922 shares (R. 43a).

At present the debtor has two principal corporate assets. The first is the cash received from the liquidation of the Schulte Tobacco Stores, from all of which debtor has withdrawn during the pendency of these proceedings; debtor has liquidated its inventories and practically all of its tangible assets.

The second asset is the debtor's equity in the capital stock of the Stineway Drug Company and the Ford Hopkins Company, both wholly owned by the debtor. As a going concern, the debtor also has a valuable asset in a carry forward operating tax loss (R. 66a-67a).

The Intervention to Dismiss Proceedings

On November 9, 1954, upon the petition of Max Shlensky, an alleged owner of 3,000 shares (less than 2/10ths of one percent of the common stock of the debtor), the District Court issued an order that the debtor and the Securities and Exchange Commission show cause why the proceedings for an arrangement under Chapter XI should not be dismissed unless within a time fixed by the Court

the petition be amended to comply with the requirements of Chapter X for the filing of a petition for reorganization under said Chapter (R. 17a). The Securities and Exchange Commission cross-moved for leave to intervene and for the same relief requested by Max Shlensky (R. 23a-28a).

On these motions the Court was asked to consider facts which the debtor considers to be irrelevant and immaterial to its right to proceed under Chapter XI. For example:

(a) The outstanding stock is held by some 7,000 stockholders, is traded on the American Stock Exchange, and is in part registered with the Securities and Exchange Commission (R. 30a).

(b) The Corporation, organized in 1915 and formerly known as D. A. Schulte, Inc., was in a Section 77-B reorganization proceeding from 1938 to the consummation of a plan on April 31, 1940. During the war years it enjoyed a profitable operation but in the post-war period its volume began to fall, its profit became narrower, attempts at modernization of the Schulte type chain of stores failed, and the debtor embarked upon a program of discontinuing the operation of its Schulte type stores and purchased the outstanding capital stock of Stineway Drug Company and The Ford Hopkins Company, which owned chains of retail stores in Chicago and mid-western states and supplied other stores (R. 31a-33a).

(c) In November, 1952 the Corporation registered 741,647 shares of its common stock with the Securities and Exchange Commission and its original Registration Statement dated November 12, 1952, had been periodically re-

vised, the last revision being dated July 21, 1954 (R. 31a). Under date of September 20, 1953 the stockholders were notified of the acquisition of the Stineway Drug Company and the reasons therefor (R. 70a-72a). In connection with the annual meeting of stockholders held February 10, 1954 the Corporation solicited proxies and sent out a proxy statement, as required by the rules of the Securities and Exchange Commission, which notified the stockholders of the Corporation's intention to purchase substantially all of the outstanding capital stock of Ford Hopkins Company (R. 67a and 73a-79a). Stockholders endorsed the program by 1,453,822 to 37,434 (R. 83a). The consummation of the Ford Hopkins purchase by the Corporation was reported to its stockholders by letter of June 30, 1954 (R. 79a-85a), and as pointed out, the Corporation's Registration Statement with the Securities and Exchange Commission was then amended as of July 21, 1954 (R. 31a).

The matter was heard by the Court, Dimock, D.J., and an opinion rendered on January 24, 1955 (R. 6a-12a). A motion for re-argument was denied (R. 12a), and an order was entered on March 7, 1955 granting the Securities and Exchange Commission leave to intervene and dismissing the proceedings for an arrangement under Chapter XI unless on or before March 15, 1955 the debtor filed an amended petition, or before such date a creditors' petition be filed under Chapter X for a reorganization (R. 3a-5a). This is the judgment which has been affirmed by the Court of Appeals except for the appellate court's direction to the District Court to set a new date within which the debtor or its creditors may file an amended petition under Chapter X if they so choose (App. pp. 5a and 9a).

Reasons for Granting the Writ

Substantial reasons for granting review and reversing the judgment below are expressed by Galston, D. J. in his dissenting opinion (App. pp. 6a-8a).

The decision below by a divided Court has decided an important question of federal law which has not been, but should be, settled by this Court, to wit: Whether the remedies offered in Chapter XI to corporate debtors may, in the interest of stockholders be denied to certain corporate debtors because they are "large" and their stock publicly held.

This Court's decision in the *U. S. Realty* case[*] (the only opinion by this Court relied on by the Courts below) had nothing to do with the foregoing question. The debtor's plan in that case expressly diminished its guarantee of mortgage certificates held by public investors and the Securities and Exchange Commission intervened in the interests of such creditors. This Court's decision was based on considerations of "the best interests of the creditors" and not the interests of stockholders. This Court has never passed on the interests of stockholders in a Chapter XI proceeding, particularly after the 1952 amendments to that chapter.

---

[*] *Securities and Exchange Commission* v. *U. S. Realty & Improvement Co.*, 310 U. S. 434 (1940), where the Court noted that its decision was to be limited to the facts in that case, and said at page 454: "While this means that arrangements of unsecured debts of corporations like respondent, may not be 'in the best of interest of creditors' and 'feasible' under Chapter XI, it does not mean that there is no scope for application of that chapter in many cases where the debtor's financial business and corporate structure differ from respondent's."

2. The Court of Appeals of the Second Circuit has here rendered a decision in conflict with a decision of the Court of Appeals of the First Circuit in the *John Hancock* case* on the same basic issue here presented as to what makes Chapters X and XI mutually exclusive. The First Circuit dismissed a Chapter X proceeding and held that it is the relief requested by the debtor which determines the proper chapter (141 Fed. 2d at 107). The Court below in dismissing the Chapter XI proceeding, has rejected that rule and instead has applied a rule involving factors not suggested by the statute, among which are whether the debtor is large and whether its stock is publicly held.

3. Confusion exists among the panels of the Second Circuit, as is evidenced in the opinions below with reference to the Court's previous decision in the *Transvision* case**. Although none of the debts sought to be arranged in the *Transvision* case was evidenced by a publicly held security, the opinion in the *Transvision* case has been criticized by a majority of the panel in this case for "slighting" the *Mecca Temple**** decision. This is hardly fair to the former panel of the Court since the *Mecca Temple* case has nothing to do with our problem. Mecca Temple was a membership corporation and of course no public stockholders were involved. The Securities and Exchange Commission intervened in that case in the in-

---

* *John Hancock Mut. Life Ins. Co.* v. *Casey*, 141 Fed. 2d 104 (1940); cert. den. 323 U. S. 713.

** *In re Transvision, Inc.*, 217 Fed. 2d 243; cert. den. —— U. S. ——; 75 Sup. Ct. 440; February 28, 1955.

*** *Mecca Temple* v. *Darrock*, 142 Fed. 2d 869 (1944); cert. den. 323 U. S. 784.

terests of debtor's bondholders who were members of the public and as public security holders directly affected by the proposed arrangement. In short, the *Mecca Temple* case merely follows on the facts and reasoning of the *U. S. Realty* case; both involved an unfair and inequitable plan directly prejudicing public security holders *as creditors*. In no sense can either decision be properly applied to the present case.

4. It has been recognized that Chapter XI of the Bankruptcy Act contains no limitation as to the type of debtor entitled to relief thereunder, that is, whether large or small, with stock privately or publicly held. This Court, in the *U. S. Realty* case said:

> "We find in neither chapter (X or XI) any definition or classification which would enable us to say that a corporation is small or large, its securityholders few or many, or that its securities are 'held by the public', so as to place the corporation exclusively within the jurisdiction of the Court under one chapter rather than the other." (310 U. S. at 447)

In the face of unanimity of comment** that the statute as written does not support a distinction between large and small debtors with stock privately or publicly held, the Court below has nevertheless applied a distinction derived from the language of this Court in an entirely different

---

* See Sec. 306(3) in Appendix, *infra*, p. 13a.

** 48 Yale Law Journal, p. 1334 at 1364 (1939 and before the *U. S. Realty* case);

40 Columbia Law Review, 1245 at 1251 (1940, commenting on the *U. S. Realty* case);

Also in re *Transvision, Inc.*, 419 F. Supp. 134 at 135.

context (*U. S. Realty*). The confusion thus created should be removed by further decision of this Court.

5. The Bankruptcy Act exhibits the Congressional intent to prevent the use of Chapter X by debtors who could obtain adequate relief under Chapter XI*. Section 130(7) of the Act** requires a petitioner under Chapter X to show specific facts why it could not obtain adequate relief under Chapter XI, and Section 146 provides that a debtor's petition under Chapter X shall be deemed not to be filed in good faith where the debtor could have obtained adequate relief under Chapter XI.* If a debtor's petition in Chapter X has been improperly filed "because adequate relief can be obtained *by the debtor* under Chapter XI", the petition shall be dismissed pursuant to Section 141 or the debtor may amend pursuant to Section 147 so as to comply with the requirements of Chapter XI. Congress has thereby forbidden the use of the extensive, elaborate and expensive procedures of Chapter X*** where all that is required by a debtor is a composition with general unsecured trade or commercial creditors. At the same time, Congress has encouraged transfer of proceedings which are improperly initiated in Chapter X to the proper chapter, namely Chapter XI.

---

* *In re Transvision, Inc.*, 217 Fed. 2d 243 at 246.

** All sections of the Bankruptcy Act cited herein are printed seriatim in the Appendix, *infra*.

*** Trustee, S. E. C. Intervention, Reorganization Manager, Creditors' Committees, Stockholders' Committees, their respective Counsels, their respective Reports, their fees and allowances, etc., described as "detailed and cumbersome", 310 U. S. at 464, and "elaborate investigatory and protective procedures", 217 Fed. 2d at 246.

The statute contains all of the bases for concluding that Congress did not intend to permit debtors to engage themselves in the extensive procedures which had developed under former Section 77-B and incorporated and embellished in the Chandler Act, Chapter X, when all that such debtors required was the composition previously available under Section 12 of the Bankruptcy Act of 1898 as re-enacted and improved in the Chandler Act, Chapter XI.*

6. The 1952 amendments to Chapter XI constitute reiterations by Congress, after the *U. S. Realty* case, that Chapter XI shall be *more available* to debtors and more like the old composition Section 12 of the Bankruptcy Act of 1898, and shall not be restricted to certain debtors.

(a) By amending Section 366 and deleting the previous requirement that arrangements be "fair and equitable", Congress has corrected any impression that might theretofore had existed** that Chapter XI was a descendant of the old equity receivership or that the equitable principles of the *Boyd* case*** should apply to a proposed composition under Chapter XI. Although formerly, the interests of stockholders, as distinguished from the interests of the

---

* Legislative history has been cited by both sides to the controversy although Mr. Justice Roberts said that it furnishes but the scantiest support to the Commission's contention and he reviewed the history (310 U. S. 434 at 465, *et seq.*).

** See this Court's opinion in the *U. S. Realty Company* case, 310 U. S. 434 at 457, quoted *infra* in the note on page 14 and compare Judge Clark's opinion in the present case (App. p. 4a) that the 1952 amendment wrote into the Bankruptcy Act the previous opinion of this Court.

*** *Northern Pacific Ry. Co.* v. *Boyd*, 228 U. S. 482 as applied in *Securities and Exchange Commission* v. *U. S. Realty & Improvement Co.*, 310 U. S. 434 at 453.

debtor, were said to be involved in the proceedings under Chapter XI, the 1952 amendment to Section 366 makes crystal clear that compositions recognized under Chapter XI constitute a negotiation between a debtor and its creditors and that the basic requisite for confirmation of a plan is that it be "for the best interests of the creditors."

(b) By adding in 1952 the new Section 328, Congress avoided the risk that previously attended debtors commencing proceedings in Chapter XI which might therefore have been dismissed because the wrong chapter had been chosen. Now none of the interests and priorities which are created by the commencement of proceedings is lost since debtor may transfer proceedings to Chapter X with the same facility which Congress originally provided in Section 147 with respect to proceedings initiated in Chapter X.

The mere procedural correction effected by new Section 328 permitting any party in interest to move for a transfer to Chapter X and to permit the proceedings otherwise to continue uninterrupted, is certainly no codification by Congress of criteria expressed in the *U. S. Realty* case on the choice between Chapter XI and Chapter X.* Nothing in Section 328 bears on criteria for determining such choice or confers discretion in the Court to determine the choice.

To the contrary, by the 1952 amendments, Congress has denied that Chapter XI bears any relationship to the original equity receivership proceedings in the Federal court. Congress has, with respect to Chapter XI, and in unmistakable terms, "reversed on the dissenting opinion" that:

---

* Cf. Clark, C.J., below, Appendix, p. 3a.

"The legislature has specified who is entitled to the relief provided by the statute and in what circumstances. The court has no power to refuse that relief on the ground that some other relief would better serve the purpose. What is meant by the statement that a court of bankruptcy is a court of equity is that its function is to make an equitable distribution of the estate among the creditors, but the principle has not been applied in the sense that the court may, in its better judgment, refuse to award the relief which Congress has accorded the bankrupt."

7. The Court below, in attempting to apply equitable discretion where there is no basis for such discretion in fact or law, has departed far from the accepted and usual course of judicial proceedings. The Court's construction of its powers under Chapter XI of the Bankruptcy Act is in violation of the supreme constitutional right in Congress to establish uniform laws on the subject of Bankruptcies in particular, and in general, to have all the legislative Powers of the federal government.**

(a) This Court, in the *U. S. Realty* case, and the Court below in the *Mecca Temple* case, were called upon to act in a Chapter XI proceeding in the interests of creditors who were public security holders and were directly affected by proposed arrangements which were manifestly *unfair* and *inequitable*. In the present case, there has been no

---

* By Mr. Justice Roberts, in *Securities and Exchange Commission* v. *U. S. Realty & Improvement Co.*, 310 U. S. 434, [illegible] 458; his opinion is in contrast to the prevailing opinion at 457, "We cannot assume that Congress has disregarded well settled principles of equity, the more so, when Congress itself has provided that the relief to be given shall be 'fair and equitable and feasible.'" Congress, in 1952, corrected the prevailing assumption by deleting "fair and equitable" from Chapter XI.

** U. S. Constitution, Art. I, Sections 1 and 8.

charge, much less proof, that there is anything unfair or inequitable about the debtor's proposed arrangement, or that any violation of stockholders' rights exists* which would warrant equitable intervention against the effect of the plain language of statutory law. No factual reason has been shown by the intervenors or by the courts below which supports a transfer to Chapter X.

(b) The jurisdiction of the court, extended by the 1952 amendment to act upon the application of the Securities and Exchange Commission or any party in interest to dismiss proceedings under Chapter XI unless the petition be amended to comply with the requirements of Chapter X, is not based on equity but rather on statutory law. There is no grant of discretion; rather there is the requirement of a finding of fact and law within the statutory framework of Chapter XI. The Judge may direct a dismissal only:

> "if he finds that the proceedings should have been brought under Chapter X."**

(c) No statutory basis has been found. Instead, the Court below has assumed that stockholders of the debtor, as distinguished from the debtor itself, are "affected"*** by the proposed arrangement and merely on the intervention of one stockholder with less than two-tenths of one percent of the stock, has assumed stockholders are "concerned", "fear" the future and "wish some assurance" not obtainable in Chapter XI.**** This flies in

---

* See opinion of Galston, D.J., Appendix, *infra*, pp. 7a and 8a.

** Bankruptcy Act, Sec. 328 added 1952.

*** Congress never envisioned that stockholders would be affected by a composition and therefore, made express provision only for creditors in Section 308; cf. Chapter X, Sec. 107 (11 U. S. C. 507; 52 Stat. 884).

**** Clark, C.J., Appendix, p. 3a.

the face of common knowledge that stockholders "stand to gain by the forebearance of the unsecured trade and commercial creditors contemplated by the arrangement."* There is no statutory basis for the Court's concern.

(d). Although borrowing from the "equitable doctrine" applied in the *U. S. Realty* and *Mecca Temple* cases, the Court below has failed to find any equitable considerations in this case, that is, even if such equitable doctrine were applicable. No such "equitable doctrine" has ever been applied when there are no creditors who are public security holders, within the jurisdictional concern of the Securities and Exchange Commission.

8. No opposition to this Court's review should be expected from the respondents in view of the representations to this Court by the Securities and Exchange Commission as to the public importance of the questions herein involved.** The questions presented not only seriously affect the Securities & Exchange Commission's functions under the Bankruptcy Act but, more important, affect the rights of all financially embarassed stock corporations whose stock is publicly held. The Bankruptcy Court and its Referees and the Bar require a definitive ruling on the meaning of the 1952 amendments to Chapter XI, that is, whether such corporations are entitled to compose their general unsecured trade and commercial debts in Chapter XI or whether under the Act as thus amended they can be forced to reorganize through Chapter X in any case in which the Securities & Exchange Commission decides to intervene.

---

* In re *Transvision, Inc.*, 119 F. Supp. 134 at 137.

** Securities and Exchange Commission petition for certiorari in re *Transvision, Inc.*, pp. 4, *et seq.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWIN M. OTTERBOURG,
Counsel for Petitioner,
Otterbourg, Steindler, Houston & Rosen,
200 Fifth Avenue,
New York 10, N. Y.

AARON ROSEN,
FREDERIC P. HOUSTON,
MARKS F. PASKES,
Of Counsel.

June 20, 1955.